CHOONG BOON SONG

v.

PP

COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
JEFFREY TAN JCA
BALIA YUSOF WAHI JCA
[CRIMINAL APPEAL NO: J-05-59-2011]
17 APRIL 2012

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 12(2) - Possession - Whether knowledge inferred from conduct - Whether correct approach adopted in assessment of evidence - Whether evidence of defence sufficiently considered - Criminal Procedure Code, s. 182*

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking - Conviction and sentence - Appeal against - Whether affirmative finding of possession made out - Whether knowledge could be inferred from evidence - Whether conviction for trafficking correctly made*

A team of police officers raided the appellant's apartment at Polo Park ('Polo house') and recovered an assortment of drugs. The police also found a house key on the table at the guest area of the premises and proceeded to the said address at Jalan Lembing ('Jalan Lembing house') together with the appellant, where various types of drugs were also found. The drugs were confirmed by the chemists to be scheduled drugs under the Dangerous Drugs Act 1952 ('DDA'). The appellant was therefore charged with 11 offences under the DDA, *inter alia*, two charges for trafficking in dangerous drugs under s. 39B(1)(a) of the DDA and nine charges for possession under s. 12(2) of the DDA. The appellant was found guilty on all the charges and was sentenced to death under s. 39B(2) for the first and second charges of trafficking. As for the nine charges of possession, the appellant was sentenced to ten years' imprisonment with ten strokes of the rotan for each charge. The appellant thus appealed against the conviction and sentences.

Held (setting aside conviction under s. 39B(2) and substituting with conviction under s. 39A(2); dismissing appeal against nine charges of possession)
Per Balia Yusof Wahi JCA delivering the judgment of the court:

(1) There must be an affirmative finding of possession before the presumption of trafficking under s. 37(da) of the DDA could be invoked. However, there was not an iota of evidence to indicate the appellant's knowledge about the drugs found in the Jalan Lembing house and neither was there any surrounding circumstances which may permit the inference of knowledge on the part of the appellant (*Chan Pean Leon v. PP;* refd). At most, the appellant could be presumed to have knowledge of the drugs in the said premises by invoking the presumption under s. 37(d) of the DDA. To go further and hold the appellant be deemed to be trafficking by invoking the presumption under s. 37(da) of the DDA would be flouting the principle against double presumption. In the circumstances, the appellant's conviction for the offence of trafficking under the DDA in respect of the first and second charges was wrong in law. (paras 23, 24 & 25)

(2) Further, there was not a shred of evidence to suggest that the appellant kept or stored the impugned drugs in the said premises. The only connection between the appellant and the Jalan Lembing house was that he rented it from an estate agent and that was not sufficient to convict the appellant for the offence he was charged with. (para 26)

(3) It is the duty of the trial judge to assess the testimony of the witnesses and to decide whether to accept or to reject and to give due weight to the evidence as the trial judge has the audio visual advantage of assessing the witnesses. The appellate court must not interfere with his findings unless there was sufficient justification to do so. (para 35)

(4) The learned trial judge found that there was evidence to support the inference of knowledge from the appellant's conduct. The learned trial judge had also adopted the correct approach in dealing with the issue and procedure of assessing

the evidence as provided under s. 182A of the Criminal Procedure Code. Hence, the contention in respect of the Polo house, that the learned judge had erred in failing to consider the defence evidence and in failing to hold that the defence had created a reasonable doubt on the prosecution's case, must fail. (paras 33 & 35)

[Appellant sentenced to 18 years imprisonment and ten strokes of the rotan for each charges of trafficking. Sentences ordered to run concurrently with sentences for the nine charges of possession.]

Bahasa Malaysia *Translation Of Headnotes*

Satu pasukan pegawai polis membuat serbuan ke atas pangsapuri perayu di Polo Park ('rumah Polo') dan menemui berbagai jenis dadah. Pihak polis juga menjumpai suatu kunci rumah di atas meja di ruang tamu rumah tersebut dan telah pergi ke alamat tersebut di Jalan Lembing ('rumah Jalan Lembing') bersama dengan perayu, di mana polis juga temui berbagai jenis dadah. Dadah-dadah tersebut disahkan oleh ahli kimia sebagai dadah berjadual di bawah Akta Dadah Berbahaya 1952 ('ADB'). Perayu oleh itu dituduh dengan 11 kesalahan di bawah ADB, antara lain, dua pertuduhan bagi pengedaran dadah berbahaya di bawah s. 39B(1)(a) ADB dan sembilan pertuduhan bagi milikan di bawah s. 12(2) ADB. Oleh itu, perayu merayu terhadap sabitan dan hukuman.

Diputuskan (mengenepikan sabitan di bawah s. 39B(2) dan menggantikan dengan sabitan di bawah s. 39A(2); menolak rayuan terhadap sembilan pertuduhan milikan)
Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:

(1) Perlu ada dapatan afirmatif milikan sebelum anggapan pengedaran di bawah s. 37(da) ADB boleh dibangkitkan. Walau bagaimanapun, tiada langsung keterangan untuk menunjukkan pengetahuan perayu tentang dadah yang ditemui di rumah Jalan Lembing dan tidak ada apa-apa hal keadaan sekeliling yang membawa kepada inferens pengetahuan perayu (*Chan Pean Leon v. PP*; dirujuk). Perayu hanya boleh dianggap mempunyai pengetahuan tentang dadah dalam rumah tersebut dengan membangkitkan anggapan di bawah s. 37(d) ADB. Untuk memutuskan selanjutnya bahawa perayu dianggap

mengedar dengan membangkitkan anggapan di bawah s. 37(da) ADB akan melanggar prinsip menentang anggapan berganda. Dalam keadaan tersebut, sabitan perayu bagi kesalahan pengedaran di bawah ADB berkaitan dengan pertuduhan pertama dan kedua adalah salah di sisi undang-undang.

(2) Selanjutnya, tiada keterangan yang menyarankan bahawa perayu menyimpan atau meletakkan dadah yang dipersoalkan di rumah tersebut. Satu-satunya kaitan antara perayu dan rumah Jalan Lembing adalah bahawa dia telah menyewa rumah tersebut daripada seorang ejen hartanah dan itu tidak mencukupi untuk mensabitkan perayu bagi kesalahan yang dipertuduh terhadapnya.

(3) Adalah tanggungjawab hakim perbicaraan untuk menilai keterangan saksi-saksi dan memutuskan sama ada hendak menerima atau menolak dan memberikan pertimbangan yang sewajarnya kepada keterangan tersebut kerana hakim perbicaraan mempunyai kelebihan melihat dan mendengar saksi tersebut. Mahkamah rayuan tidak boleh campur tangan dengan dapatannya kecuali terdapat justifikasi yang mencukupi untuk berbuat demikian.

(4) Yang arif hakim perbicaraan mendapati bahawa terdapat keterangan untuk menyokong inferens pengetahuan daripada tindakan perayu. Yang arif hakim perbicaraan juga telah menggunakan pendekatan yang betul dalam menangani isu dan prosedur penilaian keterangan seperti yang diperuntukkan di bawah s. 182A Kanun Tatacara Jenayah. Dengan itu, hujahan berkaitan dengan rumah Polo, bahawa yang arif hakim perbicaraan telah terkhilaf kerana gagal mempertimbangkan keterangan pembelaan dan gagal memutuskan bahawa pihak pembelaan telah membangkitkan keraguan munasabah terhadap kes pihak pendakwaan, sepatutnya gagal.

[Perayu diberi hukuman 18 tahun penjara dan sepuluh kali sebatan rotan bagi setiap pertuduhan pengedaran. Hukuman diperintahkan berjalan serentak dengan hukuman bagi sembilan pertuduhan milikan.]

Case(s) referred to:

Chan Pean Leon v. PP [1956] 1 LNS 17 HC ***(refd)***

Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***

Mohamed Yatin Abu Bakar v. PP [1949] 1 LNS 50 HC ***(refd)***

Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***

PP v. Yuvaraj [1968] 1 LNS 116 PC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 182A, 288
Dangerous Drugs Act 1952, ss. 2, 12(2), 37(da), 39A(2), 39B(1)(a), (2)

For the appellant - KL Chee; M/s KL Chee & Co
For the respondent - Najib Zakaria; DPP

[Editor's note: For the High Court judgment, please see PP lwn. Chong Boon Song [2011] 1 LNS 117]

Reported by S Barathi

JUDGMENT

Balia Yusof Wahi JCA:

[1] Chong Boon Song, the appellant in this case was charged with 11 drug offences. Of these, two were for the charge of trafficking in dangerous drugs, namely 79.64g of 3.4 methylenedioxymethamphetamine and 80.9g of heroin under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). The nine other charges relate to offences under s. 12(2) of the Act. He was found guilty on all these charges. He was sentenced to death for the offences of trafficking under s. 39B(2) and to various terms of imprisonment in respect of the other nine charges. This appeal is in respect of those convictions.

The Prosecution's Case

[2] A team of police officers from Bukit Aman Narcotic Division headed by Assistant Superintendent of Police Balasubramaniam s/o Rajoo (PW8) raided an apartment located at Unit 13-1L, Polo Park, Jalan Bentara Luar, Taman Polo, Johor Bahru (hereinafter referred to as 'the Polo house') at approximately 9pm on 12 August 2008. On arrival, PW8 knocked on the door to the house and the appellant opened the door. PW8 identified himself as a police officer by showing his authority card to the appellant. PW8 and his officers entered the premises and conducted a search.

[3] As a result of the search of the master bedroom, the police team recovered an assortment of drugs. PW8 also recovered an electricity bill under the name of 'Masari bin Hashim' bearing the address of No. 17, Jalan Lembing 3, Taman Sri Tebrau, Johor Bahru (hereinafter referred to as 'the Jalan Lembing house') and a house key on the table at the guest area of the premises. The

police team thereafter proceeded to the said address together with the appellant. There they conducted a search and again various types of drugs were recovered.

[4] The drugs found in the master bedroom of the Polo house were in a box on a dressing table. The drugs in the Jalan Lembing house were also found in the same manner. Drugs were also found in a cabinet in one of the rooms of the Jalan Lembing house. Besides the drugs, small plastic packets, aluminum foils, two weighing machines and two sealing equipments were also found (marked as exhs. P32, P33, P34, P35, P36 and P37, respectively). A total of 12 mobile phones (exhs. P39A-L) were also seized from the said premises.

[5] The drugs were sent to the chemist department for analysis and were confirmed by the chemists, PW3 and PW4 to be scheduled drugs under the Act. These drugs are the subject matter of the charges against the appellant.

[6] As part of the prosecution's case, an estate agent, PW6 was called who testified that the Polo house was rented out to a man using an NRIC in the name of 'Lau Wei Li'. The appellant was identified as the said man named 'Lau Wei Li'.

[7] For the Jalan Lembing house, another estate agent, PW7, also gave evidence to the effect that she rented out the said premises to a man also by the name of 'Lau Wei Li' whom PW7 identified as the appellant.

[8] The real Mr Lau Wei Li (PW5) testified that on 6 August 2006 he was robbed in front of his house. During the said robbery, his wallet containing his personal belongings including his NRIC was robbed. PW5 said in evidence that he never rented any house in Johor Bahru and does not know anything about the Polo house or the Jalan Lembing house.

[9] At the end of the prosecution's case, the learned trial judge found that a *prima facie* case has been established against the appellant and called for his defence.

The Defence Case

[10] In his defence, the appellant gave evidence on oath stating that he was married to a Thai national by the name of Hui Zhen in 2007 and stayed with her at the Polo house. During the police raid, Hui Zhen has gone out. The other room in the said house

was occupied by his friend, Tan Choon Lai, who, at the time of the police raid was also out. Both Hui Zhen and Tan Choon Lai have their own keys to the said house. According to the appellant he rented the house from an estate agent using somebody else's name because he has a criminal case in Singapore. The appellant denied that the drugs were found in his room. The appellant said that they were found in the room of Tan Choon Lai, who according to the appellant had a pet dog that was found to be missing a day after the police raid.

[11] As to what had transpired at the Jalan Lembing house, the appellant said that the police gained access to the house by cutting the padlock, and that he did not see the police searching the premises. He had helped Tan Choon Lai to rent the Jalan Lembing house from an estate agent, as Tan Choon Lai was away in Thailand. The appellant denied having any key to the Jalan Lembing house and does not know to whom the drugs found in the premises belong to.

[12] A friend of the appellant by the name of Chen Fook Onn (DW2) testified as a defence witness. DW2 said that the appellant whom he called 'Ah Boy' stayed with his wife Hui Zhen in one of the rooms at the Polo house while the appellant's friend whom he knew as 'Ah Lai' stayed in the other room. DW2 used to come to the Polo house to play mahjong and to drink. DW2 did not know Ah Lai's full name. On 13 August 2008, that is, a day after the police had raided the Polo house, at about 7.30am he was at Taman Sentosa, Johor Bahru where Hui Zhen requested him to send her to her house at Polo Park (the Polo house), to which duly he obliged. He saw Hui Zhen going into the Polo house by opening the grille door using a key. About 15 minutes later, Hui Zhen came back with some clothings and a dog and went back to Taman Sentosa. Before leaving, Hui Zhen gave him a bunch of three keys which was produced as exh. D48. According to DW2, one of the keys was used to open the grille door. DW2 was unsure whether Ah Lai had rented another house but he knew Ah Lai had a girlfriend in Taman Seri Tebrau.

[13] At the end of the defence case, the learned trial judge found the defence had failed to cast a reasonable doubt on the prosecution's case. The learned judge found that the appellant's and DW2's evidence were unconvincing and could not be

believed. It was a mere denial and an afterthought. The learned judge also found the appellant lying when the latter said that the police gained access to the Jalan Lembing house by cutting the padlock, when photographs P6 I and J showed that the padlock was still intact. The appellant was found guilty and convicted.

[14] For the first two charges of trafficking, which carry the mandatory sentence of death, the appellant was sentenced to death; while on the other nine charges of possession, he was sentenced to ten years imprisonment with ten strokes of the rotan for each charge. The imprisonment terms were ordered to run concurrently from the date of the appellant's arrest on 12 August 2008.

[15] Against the said convictions and sentences, the appellant is now appealing before us.

The Appeal

[16] At the outset we feel impelled to remark that it is our observation that some legal practitioners take the trouble to put up very lengthy petitions of appeal, and in some cases the petitions even contain up to 50 or 60 paragraphs/grounds. In the instant case, we have before us 55 grounds, thus giving us the impression that, from the appellant's standpoint, the learned trial judge had not done anything right at all! We think this is an unhealthy practice, be that as it may, we, however, note that learned counsel has put up a written submission which in our view is more realistic and direct to the point.

[17] Having heard the appeal we had allowed the appellant's appeal in respect of the two charges of trafficking, and we accordingly substituted it with a conviction under s. 39A(2) of the Act. However, we dismissed the appeal against the conviction and sentence in respect of the other nine charges for possession.

[18] We now give our reasons.

[19] The two charges of trafficking in dangerous drugs, namely, 79.64g of 3.4 methylenedioxymethamphetamine (MDMA) and 80.09g of heroin were in respect of the drugs found at the Jalan Lembing house. The raiding party's suspicion was aroused with the finding of an electricity bill (exh. P28) in the name of Masari b. Hashim bearing the Jalan Lembing house address. This

electricity bill was found lying on a table with a key (exh. P38) in the guest area of the Polo house. This led the police to the Jalan Lembing house where an assortment of drugs were found. Both PW8 and PW10 (Asp Mohd Hurrizatul Fikri) testified that there were signs that the house was inhabited. There were three bedrooms in the house. PW7, the estate agent, confirmed that the appellant was the person who rented the house. PW10 (the investigating officer) went to the house on 13 August 2008 and 19 August 2008 to take photographs and prepare a sketch plan. PW10 testified that he recovered a short sleeved shirt, orange in colour from the house. According to PW10 on testing the shirt, it fitted the appellant.

[20] With this evidence, the learned trial judge concluded as follows:

> Daripada fakta-fakta tersebut mahkamah ini boleh membuat kesimpulan yang munasabah bahawa Tertuduh mempunyai jagaan dan kawalan ke atas Rumah Jalan Lembing dan dadah-dadah berbahaya yang ditemui.

[21] The learned judge went further and made the following finding:

> Dalam kes ini saya berpuashati setelah membuat penilaian secara maksima keterangan saksi-saksi pihak pendakwaan, mendapati pihak pendakwaan telah berjaya membuktikan satu kes *prima facie* terhadap Tertuduh atas semua pertuduhan. Melalui saksi-saksi pendakwaan Tertuduh telah dibuktikan mempunyai milikan ke atas dadah-dadah berbahaya yang menjadi hal perkara asas dalam semua pertuduhan. Tertuduh juga mempunyai pengetahuan *mens rea* terhadap dadah-dadah tersebut. Oleh kerana berat dadah-dadah yang terlibat dalam Pertuduhan Pertama (Pindaan) dan Pertuduhan Kedua melebihi berat minima yang diperuntukkan di bawah seksyen 37(da)(vi) Akta, maka anggapan pengedaran (trafficking) adalah terpakai (lihat kes *Muhammad Hassan v. PP* (1982) 2 CLJ 170). Selain itu, keadaan dadah-dadah dalam dua pertuduhan tersebut serta lain-lain dadah berbahaya yang ditemui di dua premis yang diserbu turut menunjukkan bahawa Tertuduh terlibat dalam aktiviti pengedaran dadah-dadah berbahaya yang dirampas. Perbuatan menyimpan (keeping) dan penyetoran (storing) termasuk dalam definisi pengedaran di bawah seksyen 2 Akta. Oleh yang demikian Tertuduh diperintahkan untuk membela diri atas semua pertuduhan yang dihadapkan kepada beliau.

[22] It is a basic principle that in order to have possession of a thing one has to have knowledge of the thing that one is alleged to possess. As stated by Thomson J in *Chan Pean Leon v. PP* [1956] 1 LNS 17 "there can be no possession without knowledge and knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances which will support such an inference is infinite. There may be something in the accused's behaviour that shows knowledge, or the nature of the thing may be so obvious that it is possible to say 'he must have known what it was' or, again in cases under the Dangerous Drugs Ordinance, there may be a statutory presumption which fills a gap in the evidence."

[23] Having perused the entire judgment of the learned trial judge, we have not been able to find the ingredient of "possession" as one understands it in criminal law. Before the learned trial judge could invoke the presumption of trafficking under s. 37(da) of the Act there must be an affirmative finding of possession. With the evidence adduced by the prosecution, as what we have narrated in the preceding paragraphs, we are of the view that there is not an *iota* of evidence to indicate the appellant's knowledge about the drugs found in the Jalan Lembing house and neither can we find any surrounding circumstances which may permit the learned trial judge to infer knowledge on the part of the appellant. It is true that the learned trial judge has found "tertuduh telah dibuktikan mempunyai milikan ke atas dadah-dadah berbahaya yang menjadi hak perkara asas dalam semua pertuduhan" and "tertuduh juga mempunyai pengetahuan *mens rea* terhadap dadah-dadah tersebut". But what is the evidence to support such findings?

[24] Having considered the totality of the evidence, we are of the considered view that at most, the appellant can be presumed to have knowledge of the drugs in the said premises by invoking the presumption under s. 37(d) of the Act. And it has to stop there. To go further and hold the appellant be deemed to be trafficking by invoking the next presumption under s. 37(da) of the Act would be flouting the principle against double presumption (see: *Muhammed Hassan v. PP* [1998] 2 CLJ 170).

[25] For the aforesaid reason we are of the view that the conviction of the appellant for the offence of trafficking under the Act in respect of the first and second charges is wrong in law and the appellant's appeal is hereby allowed. The conviction under s. 39B(2) of the Act in respect of the first and second charges is therefore, set aside and we hereby substitute it with a conviction under s. 39A(2) of the same.

[26] We further note that the learned trial judge also found that the act of keeping and storing the drugs in the said premises is trafficking within the meaning of s. 2 of the Act. And as such the appellant is trafficking in dangerous drugs. We disagree. Again we find that there is not a shred of evidence to suggest that the appellant kept or stored the impugned drugs there. The only connection between the appellant and the Jalan Lembing house is that he rented it from PW7. This, in our view, is not sufficient to convict the appellant for the offence he was charged.

[27] In respect of the conviction of the appellant on the other charges for possession of the impugned drugs found in the Jalan Lembing house, we see no reason to interfere with the finding and decision of the learned trial judge. Accordingly, the conviction and sentence in respect of the third, fourth and fifth charges are affirmed.

Drugs In The Polo House

[28] In respect of the drugs found at the Polo house, learned counsel for the appellant submitted that the learned trial judge has erred in law in finding that the prosecution has proved a *prima facie* case of possession under s. 12 of the Act. It is submitted that the prosecution has failed to prove that the appellant has exclusive possession over the drugs found in the house as there is the possibility that a third party may have access to the same.

[29] In finding that a *prima facie* case has been established by the prosecution against the appellant on the six charges of possession of the various types of drugs found at the Polo house, we find it necessary to reproduce what the learned trial judge has said in his grounds of judgment:

A Keterangan SP8 diterima oleh mahkamah ini. Beliau seorang saksi yang berkredibel dan boleh dipercayai. Keterangan beliau tidak goyah semasa disoal-balas. Keterangan SP8 disokong dalam hala perkara yang matan oleh keterangan Detektif Sub-Inspektor Yusoff bin Ishak (SP9) Keterangan SP8 kepada mahkamah ini jelas
B menunjukkan bahawa beliau membuat serbuan ke rumah Pangsapuri Polo setelah menerima maklumat mengenai aktiviti pengedaran dadah dilakukan dipangsapuri tersebut. Semasa serbuan dilakukan, Tertuduh berada seorang diri di pangsapuri tersebut. Tiada orang lain ditemui di pangsapuri itu dan tiada apa-
C apa dokumen pengenalan diri serta harta milik peribadi orang lain dijumpai di dalam pangsapuri tersebut. Tiada pakaian wanita atau pakaian orang lain ditemui dalam pangsapuri tersebut. Dakwaan peguambela bahawa teman wanita Tertuduh yang bernama Hui Zhen turut tinggal di pangsapuri tersebut juga tidak benar. Penama Tan Choon Lai yang dikatakan turut tinggal dipangsapuri tersebut
D juga tidak benar. Pakaian yang ditemui dalam pangsapuri tersebut telah diacupakai kepada Tertuduh dan didapati pakaian tersebut sesuai dan berpadanan dengan badan Tertuduh. Oleh itu mahkamah ini mendapati tiada keraguan bahawa Tertuduh berada seorang diri dalam Pangsapuri Polo tersebut pada waktu serbuan dilakukan. Selain itu turut dibuktikan oleh saksi pendakwaan
E bahawa Tertuduh seorang diri telah menyewa Pangsapuri Polo tersebut.

[30] And at a later part of the grounds of judgment, the learned judge inferred knowledge on the part of the appellant relating to
F the drugs found in the said premises. In the words of the learned judge:

Keterangan SP8 mengenai kelakuan Tertuduh sewaktu barang kes dadah ditemui dalam bilik tidur utama di mana pakaian Tertuduh turut ditemui boleh diterima di bawah seksyen 8 Akta Keterangan.
G SP8 menyatakan mengenai kelakuan Tertuduh itu seperti berikut, iaitu "Masa barang kes ditemui OKT menjadi takut dan bimbang. Saya dapati daripada rawak muka dia". Kelakuan Tertuduh menjadi takut dan bimbang setelah dadah ditemui boleh secara munasabahnya mahkamah ini membuat inferen bahawa Tertuduh
H mempunyai pengetahuan salah terhadap barang-barang kes dadah tersebut (lihat *PP v. Ouseng Sama-Ae* [2008] 1 CLJ 337; *Lee Kwan Who v. PP* [2008] 4 CLJ 133 dan *Surentheran Selvaraju v. PP* [2005] 2 CLJ 264).

[31] We do not see anything inherently wrong with the above
I finding. At the risk of repeating ourselves, knowledge is always and can only be proved by inference from the surrounding circumstances. There is evidence to support the inference of

knowledge from the conduct of the appellant in this case, as made by the learned trial judge in the above quoted passage of his judgment. We find no reason as to justify us to interfere with his finding.

[32] On the defence evidence, it was the contention of the appellant's learned counsel that the learned trial judge has erred in holding that the defence has failed to cast a reasonable doubt on the prosecution's case. Learned counsel submitted that the existence of Hui Zhen and Tan Choon Lai as brought up by the defence, and the evidence of DW2 regarding these two named persons and the production of the bunch of keys marked as exh. D48 should be sufficient grounds to create a reasonable doubt on the prosecution's case.

[33] Our perusal of the learned trial judge's written judgment leaves us in no doubt that the correct approach in dealing with the issue and procedure of assessing the evidence as provided under s. 182A of the Criminal Procedure Code has been adopted. The learned trial judge's reference to the oft quoted cases of *Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311, *PP v. Yuvaraj* [1968] 1 LNS 116; [1969] 2 MLJ 89 and *Mohamed Yatin Abu Bakar v. PP* [1949] 1 LNS 50; [1950] MLJ 57 gives a correct statement of the law on this issue. Although the learned trial judge may have stated it very briefly, the following part of the judgment which we now quote is the learned judge's analysis of the defence evidence. It states as follows:

> Selepas meneliti keseluruhan keterangan di hadapan mahkamah ini, saya mendapati pihak pembelaan telah gagal untuk menimbulkan sebarang keraguan yang munasabah terhadap kebenaran kes pihak pendakwaan. Keterangan Tertuduh dan keterangan daripada saksi SD2 bukan sahaja tidak menyakinkan, tidak boleh dipercayai dan tidak menimbulkan apa-apa keraguan yang munasabah terhadap kes pihak pendakwaan. Pembelaan Tertuduh hanyalah satu penafian yang kosong semata-mata dan bersifat satu pemikiran terkemudian (afterthought). Tidak munasabah cerita Tertuduh beliau menyewa Rumah Jalan Lembing untuk dan bagi pihak Tan Choon Lan. Tidak munasabah juga Tan Choon Lan tinggal di Pangsapuri Polo sedangkan tiada bukti-bukti menunjukkan fakta ini. Sebaliknya terdapat keterangan kukuh bahawa Tan Choon Lan sebenarnya tinggal di Taman Seri Tebrau. Penama tersebut juga turut ditangkap di sana pada hari yang sama Tertuduh ditangkap.

A Tertuduh jelas berbohong apabila beliau menyatakan pihak polis telah memotong dua buah mangga yang terdapat di Rumah Jalan Lembing sedangkan gambar-gambar P6 I dan J dengan jelas menunjukkan mangga-mangga tersebut masih dalam keadaan baik. Dalam soal-balas Tertuduh turut bersetuju mangga-mangga tersebut tidak putus dan tidak terpotong.

B

[34] We note that the name Tan Choon Lan referred to by the learned trial judge in the above passage must be read as Tan Choon Lai. We believe there is a spelling error here.

C **[35]** With respect, we are unable to agree with learned counsel's contention that the learned trial judge has erred in failing to consider the defence evidence and in failing to hold that the defence has created a reasonable doubt on the prosecution's case. It is the duty of the trial judge to assess the testimony of the D witnesses and to decide whether to accept or to reject and to give due weight to the evidence. The trial judge had the audio visual advantage of assessing the witnesses and we must not interfere with his findings unless we find sufficient justification to do so. The appellant's objection on this ground must fail. The E appellant's appeal against the conviction and sentence in respect of the six charges for possession of dangerous drugs at the Polo house is hereby dismissed.

[36] In substituting for the offence of trafficking on the first and F second charges with an offence of possession punishable under s. 39A(2) of the Dangerous Drugs Act 1952, we have considered the appellant's plea in mitigation and the submissions in reply by the learned Deputy Public Prosecutor. Accordingly, we imposed a sentence of 18 years imprisonment and a sentence of whipping G with ten strokes of the rotan for each of the two charges of trafficking. We also ordered the sentence of imprisonment to run concurrently with the sentences on the other nine charges which we have affirmed earlier.

[37] We wish to add that, in compliance with s. 288 of the H Criminal Procedure Code, the total number strokes of whipping to be inflicted on the appellant should only be limited to 24 strokes.

I